

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Darrin D. Holston, #288828,)
Petitioner,) C.A. No. 9:17-899-HMH-BM
vs.)
Leroy Cartledge,)
Respondent.)

OPINION & ORDER

This matter is before the court on Darrin D. Holston’s (“Holston”) pro se motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. For the reasons that follow below, the court denies Holston’s motion.

The court previously granted Respondent’s motion for summary judgment and dismissed Holston’s 28 U.S.C. § 2254 petition in an order dated July 18, 2018, because Holston failed to file timely objections to the Report and Recommendation. (Jul. 18, 2018 Order, ECF No. 58.) Holston filed the instant Rule 60(b) motion on August 2, 2018. (Rule 60(b) Mot., ECF No. 61.) This matter is ripe for consideration.

Rule 60(b) “invest[s] federal courts with the power in certain restricted circumstances to vacate judgments whenever such action is appropriate to accomplish justice.” Compton v. Alton S.S. Co., 608 F.2d 96, 101-02 (4th Cir. 1979) (internal quotation marks omitted). “The remedy provided by the Rule, however, is extraordinary and is only to be invoked upon a showing of exceptional circumstances.” Id. at 102. In his Rule 60(b) motion, Holston requests that the court excuse his untimely objections to the Report and Recommendation because he assumed

objections were required within “fourteen business days and not fourteen calendar days.” (Rule 60(b) Mot., ECF No. 61.) However, Holston previously filed timely objections to the magistrate judge’s Report and Recommendation and a motion for extension of time on December 18, 2017. (Objs., ECF No. 29 & Mot. Extension of Time, ECF No. 30.) Therefore, the court finds Holston’s argument is without merit. Further, Holston has failed to show exceptional circumstances to vacate the judgment. Based on the foregoing, Holston’s motion for relief from judgment is denied.

It is therefore

ORDERED that Holston’s motion for relief from judgment, docket number 61, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
August 6, 2018

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.